

ASSEMBLY BILL

No. 1704

Introduced by Assembly Member Hagman

February 13, 2014

An act to amend Section 12389 of the Insurance Code, relating to title insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1704, as introduced, Hagman. Underwritten title companies: escrow.

Existing law authorizes an underwritten title company, as defined, to engage in the escrow business and act as an escrow agent as long as it fulfills specified requirements.

This bill would make technical, nonsubstantive changes to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 12389 of the Insurance Code is amended
- 2 to read:
- 3 12389. (a) An underwritten title company as defined in Section
- 4 12340.5, which shall be a stock corporation, may engage in the
- 5 business of preparing title searches, title reports, title examinations,
- 6 or certificates or abstracts of title, upon the basis of which a title
- 7 insurer writes title policies, provided that:
- 8 (1) Only domestic corporations may be licensed under this
- 9 section and ~~no~~ an underwritten title company, as defined in Section

12340.5, shall *not* become licensed under this section, or change the name under which it is licensed or operates, unless it has first complied with Section 881.

(2) (A) Depending upon the county or counties in which the company is licensed to transact business, it shall maintain required minimum net worth as follows:

Aggregate number of documents
recorded and documents filed in the
offices of the county recorders in the
preceding calendar year in all counties
where the company is licensed to transact
business.

Number of documents	Amount of required minimum net worth
Less than 50,000	\$ 75,000
50,000 to 100,000	120,000
100,000 to 500,000	200,000
500,000 to 1,000,000	300,000
1,000,000 or more	400,000

“Net worth” is defined as the excess of assets over all liabilities and required reserves. It may carry as an asset the actual cost of its title plant provided the value ascribed to that asset shall not exceed the aggregate value of all other assets.

~~Where~~

(B) *Where* a title plant of an underwritten title company is not being currently maintained, the asset value of the plant shall not exceed its asset value as determined in the preceding paragraph as of the date to which that plant is currently maintained, less one-tenth thereof for each succeeding year or part of the succeeding year that the plant is not being currently maintained. For the purposes of this section, a title plant shall be deemed currently maintained so long as it is used in the normal conduct of the business of title insurance, and ~~(A)~~ (i) the owner of the plant continues regularly to obtain and index title record data to the plant or to a continuation thereof in a format other than that previously used, including, but not limited to, computerization of the data, or ~~(B)~~ (ii) the owner of the plant is a participant, in an arrangement for joint use of a title plant system regularly maintained in any

format, provided the owner is contractually entitled to receive a copy of the title record data contained in the jointly used title plant system during the period of the owner's participation therein, either periodically or upon termination of that participation, at a cost not to exceed the actual cost of duplication of the title record data.

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(C) *An* underwritten title company at all times shall maintain current assets of at least ten thousand dollars (\$10,000) in excess of its current liabilities, as current assets and liabilities may be defined pursuant to regulations made by the commissioner. In making the regulations, the commissioner shall be guided by generally accepted accounting principles followed by certified public accountants in this state.

(3) (A) *An* underwritten title company shall obtain from the commissioner a license to transact its business. The license shall not be granted until the applicant conforms to the requirements of this section and all other provisions of this code specifically applicable to applicant. After issuance the holder shall continue to comply with the requirements as to its business set forth in this code, in the applicable rules and regulations of the commissioner and in the laws of this state.

~~Any~~

(B) *Any* underwritten title company who possesses, or is required to possess, a license pursuant to this section shall be subject as if an insurer to the provisions of Article 8 (commencing with Section 820) of Chapter 1 of Part 2 of Division 1 of this code and shall be deemed to be subject to authorization by the Insurance Commissioner within the meaning of subdivision (e) of Section 25100 of the Corporations Code.

~~The~~

(C) *The* license may be obtained by filing an application on a form prescribed by the commissioner accompanied by a filing fee of three hundred fifty-four dollars (\$354). The license when issued shall be for an indefinite term and shall expire with the termination of the existence of the holder, subject to the annual renewal fee imposed under Sections 12415 and 12416.

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(D) *An* underwritten title company seeking to extend its license to an additional county shall pay a two hundred seven dollar (\$207) fee for each additional county, and shall furnish to the

1 commissioner evidence, at least sufficient to meet the minimum
2 net worth requirements of paragraph (2), of its financial ability to
3 expand its business operation to include the additional county or
4 counties.

5 (4) (A) An underwritten title company shall furnish an audit to
6 the commissioner on the forms provided by the commissioner
7 annually, either on a calendar year basis on or before March 31
8 or, if approved in writing by the commissioner in respect to ~~any~~
9 *an* individual company, on a fiscal year basis on or before 90 days
10 after the end of the fiscal year. The time for furnishing ~~any~~ *an* audit
11 required by this paragraph may be extended, for good cause shown,
12 on written approval of the commissioner for a period, not to exceed
13 60 days. Failure to submit an audit on time, or within the extended
14 time that the commissioner may grant, shall be grounds for an
15 order by the commissioner to accept no new business pursuant to
16 subdivision (d). The audits shall be private, except that a synopsis
17 of the balance sheet on a form prescribed by the commissioner
18 may be made available to the public.

19 (B) The audits shall be made in accordance with generally
20 accepted auditing standards by an independent certified public
21 accountant or independent licensed public accountant whose
22 certification or license is in good standing at the time of the
23 preparation. The fee for filing the audit shall be three hundred
24 thirteen dollars (\$313).

25 (C) The commissioner may refuse to accept an audit or order a
26 new audit for any of the following reasons:

27 (i) Adverse result in any proceeding before the California Board
28 of Accountancy affecting the auditor's license.

29 (ii) The auditor has an affiliation with the underwritten title
30 company or any of its officers or directors that would prevent his
31 or her reports on the company from being reasonably objective.

32 (iii) The auditor has suffered conviction of ~~any~~ *a* misdemeanor
33 or felony based on his or her activities as an accountant.

34 (iv) Judgment adverse to the auditor in any civil action finding
35 him or her guilty of fraud, deceit, or misrepresentation in the
36 practice of his or her profession.

37 ~~Any~~

38 (D) *Any* company that fails to file ~~any~~ *an* audit or other report
39 on or before the date it is due shall pay to the commissioner a
40 penalty fee of one hundred eighteen dollars (\$118) and on failure

1 to pay that or any other fee or file the audit required by this section
2 shall forfeit the privilege of accepting new business until the
3 delinquency is corrected.

4 (b) An underwritten title company may engage in the escrow
5 business and act as escrow agent, *as defined in Sections 17003*
6 *and 17004 of the Financial Code*, provided that:

7 (1) It shall maintain record of all receipts and disbursements of
8 escrow funds.

9 (2) It shall deposit seven thousand five hundred dollars (\$7,500)
10 for each county in which it transacts business in some form
11 permitted by Section 12351 with the commissioner who shall
12 immediately make a special deposit of that amount in the State
13 Treasury and that deposit shall be subject to Sections 12353, 12356,
14 12357, and 12358 and, as long as there are no claims against the
15 deposit, all interest and dividends thereon shall be paid to the
16 depositor. The deposit shall be for the security and protection of
17 persons having lawful claims against the depositor growing out of
18 escrow transactions with it. The deposit shall be maintained until
19 four years after all escrows handled by the depositor have been
20 closed.

21 (A) The commissioner may release the deposits prior to the
22 passage of the four-year period upon presentation of evidence
23 satisfactory to the commissioner of either a statutory merger of
24 the depositor into a licensee or certificate holder subject to the
25 jurisdiction of the commissioner, or a valid assumption agreement
26 under which all liability of the depositor stemming from escrow
27 transactions handled by it is assumed by a licensee or certificate
28 holder subject to the jurisdiction of the commissioner.

29 (B) With the foregoing exceptions, the deposit shall be returned
30 to the depositor or lawful successor in interest following the
31 four-year period, upon presentation of evidence satisfactory to the
32 commissioner that there are no claims against the deposit stemming
33 from escrow transactions handled by the depositor. If the
34 commissioner has evidence of one or more claims against the
35 depositor, and the depositor is not in conservatorship or liquidation,
36 the commissioner may interplead the deposit by special
37 endorsement to a court of competent jurisdiction for distribution
38 on the basis that claims against the depositor stemming from
39 escrow transactions handled by it have priority in the distribution
40 over other claims against the depositor.

1 (c) The commissioner shall, whenever it appears necessary,
2 examine the business and affairs of a company licensed under this
3 section. All of these examinations shall be at the expense of the
4 company.

5 (d) (1) At any time that the commissioner determines, after
6 notice and hearing, that a company licensed under this section has
7 willfully failed to comply with a provision of this section, the
8 commissioner shall make his or her order prohibiting the company
9 from conducting its business for a period of not more than one
10 year.

11 ~~Any~~
12 (2) *Any* company violating the commissioner's order is subject
13 to seizure under Article 14 (commencing with Section 1010) of
14 Chapter 1 of Part 2 of Division 1, is guilty of a misdemeanor, and
15 may have the license revoked by the commissioner. ~~Any~~ A person
16 aiding and abetting ~~any~~ a company in a violation of the
17 commissioner's order is guilty of a misdemeanor.

18 ~~The~~
19 (e) *The* purpose of this section is to maintain the solvency of
20 the companies subject to this section and to protect the public by
21 preventing fraud and requiring fair dealing. In order to carry out
22 these purposes, the commissioner may make reasonable rules and
23 regulations to govern the conduct of its business of companies
24 subject to this section.

25 ~~The~~
26 (f) *The* name under which each underwritten title company is
27 licensed shall at all times be an approved name. The fee for filing
28 an application for a change of name shall be one hundred eighteen
29 dollars (\$118). Each ~~such~~ company shall be subject to the
30 provisions of Article 14 (commencing with Section 1010) and
31 Article 14.5 (commencing with Section 1065.1) of Chapter 1 of
32 Part 2 of Division 1.

33 ~~The~~
34 (g) *The* rules and regulations shall be adopted, amended, or
35 repealed in accordance with the procedure provided in Chapter
36 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
37 Title 2 of the Government Code.